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IN THE

Supreme Court of the United States

October Term, 1959

No. 553

LA GLORIA OIL AND GAS COMPANY and LA GLORIA CORPORATION, a Dissolved Texas Corporation, *Petitioners*

v.

FRANK SCOFIELD, Formerly Collector of Internal Revenue, First District of Texas, *Respondent*

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Fifth Circuit

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La Gloria Oil and Gas Company and La Gloria Corporation pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered on July 16, 1959 (Appendix A, infra, p. 1a). Petition for rehearing was denied on October 9, 1959 (Appendix B, infra, p. 2a).

Opinions Below

The opinion of the United States Court of Appeals is reported officially in 268 F. 2d 699. Both the majority

opinion (Tuttle, Circuit Judge) and the dissenting opinion (Brown, Circuit Judge) are printed as Appendices C and D respectively; infra, pp. 3a and 24a.

The findings of fact and conclusions of law of the United States District Court for the Western District of Texas (Rice, District Judge) are reported officially in 171 F. Supp. 617; and are printed as Appendix E, infra, p. 60a. The judgment of the United States District Court is printed as Appendix F, infra, p. 84a.

Jurisdiction

The judgment of the United States Court of Appeals was entered on June 16, 1959 (Appendix A, supra). A petition for rehearing was timely filed on August 29, 1959, pursuant to order granting extension of time; and was denied on October 9, 1959 (Appendix B, supra). Review by petition for writ of certiorari is sought pursuant to, and the jurisdiction of this Court is invoked under, the provisions of 28 U.S.C. 1254 (1).

Questions Presented

Petitioner herein is a party to three respective intricate multiparty transactions for the production of heavier hydrocarbons from multiple high pressure gas reservoirs within a designated area in South Texas; and acquired one-half of the heavier hydrocarbons by reason of its contributions of and operation of cycling facilities and other undertakings. Such hydrocarbons are recovered as liquids in the separation phase and in the absorption phase of Petitioner's cycling facilities. The commingled stream of liquids is then separated into respective hydrocarbon compounds in the fractionation phase of such facilities.

The primary question is whether Petitioner had an economic interest in its share of the heavier hydrocarbons and is entitled to the statutory 27½% depletion deduction under Sections 23(m) and 114(b)(3) of the Internal Revenue Code of 1939.

The secondary question is, if Petitioner does have an economic interest in its share of the heavier hydrocarbons, whether Petitioner is entitled to the statutory depletion deduction on all of its income from its share of such hydrocarbons or only on that part of its income attributable to the separation and absorption phases of its cycling facilities or only on that part of its income attributable to the separation phase of such cycling facilities.

Statute Involved

The statute involved is the Internal Revenue Code of 1939, Section 23(m), and Section 114(b)(3), which are printed as Appendix G, infra, p. 87a. Applicable Treasury Regulation 111, Section 29.23(m)-1(b), is printed as Appendix H, infra, p. 88a.

Statement

Petitioner brought four suits in the United States District Court for the Western District of Texas pursuant to the provisions of 28 U.S.C. 1340 for the recovery of certain sums assessed against La Gloria Corporation as income taxes and interest, and as such collected by the Collector of Internal Revenue for the First District of Texas, together with interest (R. 1; 9; 18; 27). Each suit related to a different fiscal year of Petitioner; and each suit presented the question of whether taxpayer had an economic interest in its share of the heavier hydrocarbons

acquired by it pursuant to its undertakings under three several agreements (Ex. A, R. 53; Ex. B, R. 86; Ex. C, R. 116) so as to entitle it to the statutory depletion deduction, as well as presenting the secondary question appearing supra. The Collector of Internal Revenue had not allowed taxpayer the statutory depletion deduction on any of its income from its share of the heavier hydrocarbons acquired and produced pursuant to such agreements.

The precise minerals involved herein consist of Petitioner's share of each of the heavier hydrocarbon compounds of ethanes, propanes, butanes, hexanes, and heptane and heavier compounds, which exist in a natural state and in a vapor state in high pressure gas reservoirs involved herein and, in the aggregate comprise approximately 6% by volume of the gas in each reservoir.[1]

There is not involved herein any question with reference to any depletion deduction relating to crude oil, or to casinghead gas, or to the lighter hydrocarbon compound of methane which exists in a natural vapor state in the high pressure gas reservoirs involved herein and comprises approximately 94% by volume of the gas in each reservoir.

The central fact of the chronology of the development and operation of the La Gloria Field is that this field was developed for and constituted a project for cycling and the production of the mineral deposits of the heavier hydrocarbons. The cycling process accomplished two production purposes, namely: cycling was the only means under the

[1]Such designated heavier hydrocarbon compounds are often collectively referred to in the Record as "heavier hydrocarbons"; and in the respective conveyance agreements they are collectively designated by the terms "natural gasoline, condensate and other products" (R. 53, 86, 116).

conservation laws of Texas whereby in the years in question in this field heavier hydrocarbons could have been produced and recovered and cycling enabled the production and recovery of substantial quantities of such compounds which without such procedure and the resultants maintenance of pressure in the reservoir would have been irretrievably lost by retrograde condensation.[3]

Among other facts, Petitioner and Respondent herein stipulated as follows:

> "21. In the year 1940 Magnolia Petroleum Company, et al, owned certain interests in certain undeveloped oil and gas leases covering lands in the La Gloria Field. Prior to June 4, 1940, five exploratory wells had been drilled on certain leases in the La Gloria Field and had established the existence of the hereinbefore mentioned lighter and heavier hydrocarbon compounds in some reservoirs underlying a portion of such leases. There then existed the contingent possibility that the drilling of a substantial number of additional wells would develop substantial reserves of said lighter and heavier hydrocarbon compounds." (R. 44)
>
> "22. In the years 1940 through 1950, in so far as the LaGloria Field was concerned, there existed no available substantial markets for the lighter hydrocarbon compound of methane; but there did exist available markets for some of the heavier hydrocarbon compounds. In the years 1951 and 1952 a market for

[3]Stipulation of the parties (R. 45); Findings of Fact by the District Court (R. 197); special order of the Railroad Commission of Texas (R. 218-219)."

[3]Stipulation of the parties (R. 46); Findings of Fact by the District Court (R. 198, 199); special order of the Railroad Commission of Texas (R. 221-228).

some quantities of the lighter hydrocarbon compound of methane did become available to the La Gloria Field. Under the conservation laws of the State of Texas, in the absence of an available market for the methane hydrocarbon compound, the production of natural gas from the La Gloria Field and the separation therefrom of the heavier hydrocarbon compounds, followed by the flaring of the residue gas, that is the lighter methane hydrocarbon compound, would have been deemed to have constituted physical waste and would not have been permitted. The then existing only feasible means of obtaining an economic return from the natural gas reserves was a method of separating the marketable heavier hydrocarbon compounds from the natural gas and then returning the remaining residue or lighter hydrocarbon compounds to the gas producing formations and reservoirs underlying the lands covered by the leases. Such existing feasible and efficient means involved the establishment of adequate natural gas reserves, the construction and operation of a natural gas processing or separation plant, the construction and operation of gathering lines and return lines, the existence of necessary producing gas wells and input gas wells, and the construction and operation of requisite compressors and other facilities for compressing the residue gas to a pressure in excess of that existing in the gas producing formations. The operation of these facilities involves producing the heavier hydrocarbon compounds by means of gas wells, gathering the gas through gathering lines to a plant, separating the heavier hydrocarbon compounds therefrom in such plant, compressing the residue gas, and returning the residue gas through return lines to input wells, the injection of such gas through input wells to producing formations, the maintenance of pressure in the reservoir, and the forced flow or migration of heavier hydrocarbon compounds toward the producing wells." (R. 44-46)

"23. The maintenance of pressure in the reservoir results in preventing retrograde condensation and the permanent loss of a portion of the heavier hydrocarbon compounds in the reservoir, and as to all sands containing crude oil also results in the ultimate recovery of a greater portion of the crude oil than would be recovered if the hydrocarbon compound of methane was delivered to markets in lieu of being reinjected for pressure maintenance." (R. 46)

Petitioner desired to make investments and contributions for the purpose of obtaining revenues through cycling from the mineral deposit of the heavier hydrocarbons; and it entered into the multiparty agreement for the La Gloria Unit dated June 4, 1940 (R. 53) with Magnolia Petroleum Company, et al., the then owners of part of the undeveloped gas leaseholds in the La Gloria Field.

The general substance of such agreement was as follows: 1. Petitioner would use its best efforts to unitize participating area (R. 61-62); 2. Petitioner would at its expense construct a cycling plant and gathering and return lines with capacity of 150,000,000 cubic feet of gas per day to recover natural gasoline, condensate and other products (heavier hydrocarbons) and to return the residue gas (methane) at high pressure into the producing formations, with such capacity exclusively dedicated to such paprticipating area (R. 62-66); 3. Petitioner would drill and equip sufficient gas wells, not exceeding twenty, to enable production of 150,000,000 cubic feet of gas per day and input wells for return of gas to producing formations with Petitioner to recoup such well costs from production (R. 55-58); 4. Petitioner would operate plant, take and process gas for recovery of heavier hydrocarbons and return residue gas (methane) into producing formations during life of the

leases, with Petitioner not obligated to take gas with less than specified GPM content or if production diminished below designated minimum quantity because of such production being unprofitable (R. 53-55; 67-68); and 5. In consideration of Petitioner's investment and undertakings it acquired 50% of the heavier hydrocarbons contained in all gas in and under and to be produced from the leases (R. 53-55; 60; 67-68).

Petitioner entered into a further multiparty agreement for the South La Gloria Unit dated June 16, 1941 (R. 86) with Magnolia Petroleum Company, et al., the then owners of other undeveloped leaseholds in such field; and entered into a further multiparty agreement for the Moos Unit dated May 31, 1943 (R. 116) with The Texas Company, et al., the then owners of other undeveloped leaseholds in the same field. The general substance of both such agreements is similar to that stated above with reference to the agreement dated June 4, 1940.

Pursuant to each of the aforesaid agreements Petitioner severally secured execution of unitization agreements, constructed its cycling facilities, gathering lines, return lines and meter stations, constructed additions to and expansions of such facilities, caused sixteen gas wells to be drilled and equipped, all of which expenditures aggregated approximately $5,452,000 (R. 47-48); and has operated its facilities for the production and recovery of the heavier hydrocarbons. Petitioner's gross income during each of the fiscal years from its share of the heavier hydrocarbons pursuant to each of the three separate agreements is severally stipulated by Petitioner and Respondent (R. 38-39).

As to the secondary issue, Petitioner and Respondent stipulated that if the Court found for Petitioner on the

primary issue then (1) if the Court found Petitioner was entitled to depletion on the hydrocarbons recovered in the separator, absorber and fractionator the deduction would be 27½%, of 100%, of its share of such production; but (2) if the Court found Petitioner was entitled to depletion on the hydrocarbons recovered in the separator and absorber the deduction would be 27½%, of 86½%, of its share of such production; but (3) if the Court found Petitioner was entitled to depletion on the hydrocarbons recovered in the separator the deduction would be 27½%, of 60%, of its share of such production. (R. 39-41) The dollar amount of depletion with reference to Petitioner's share of the heavier hydrocarbons pursuant to each of the three separate agreements is severally stipulated (R. 39-41).

The findings of fact and conclusions of law of the United States District Court are printed as Appendix E, infra, page 60a. The District Court concluded: that Petitioner is entitled to depletion on its share of the heavier hydrocarbons because it had an economic interest in such hydrocarbons; that Petitioner acquired by investment an interest in the hydrocarbons in place because (a) it contributed essential facilities to the production through investing and risking millions of dollars, and (b) it was engaged in the production of the hydrocarbons, and (c) it received a right to the hydrocarbons because it was conveyed an interest in the hydrocarbons in, under and to be produced; that Petitioner had to look solely to production for the recovery of its capital investment; and that Petitioner is entitled to depletion on all of its income from its share of the hydrocarbons because all of the hydrocarbons recovered in the plant are a part of the production process and are indispensable to the extraction of the hydrocarbons in the same chemical form as they were in the earth. The judgment of the District Court is printed as Appendix F, infra, p. 84a.

The judgment of the Circuit Court of Appeals reversed the judgment of the District Court and is printed as Appendix A, infra, p. 1a. The majority opinion of the Circuit Court of Appeals is printed as Appendix C, infra, page 3a. The majority opinion concludes: that Petitioner does not have an economic interest because there was no actual conveyance of any of the minerals in place; that Petitioner is a stranger to the lease; that conceptually this case is very close to *Helvering v. Bankline Oil Co.*, 303 U.S. 362; that the mere fact that Petitioner's extracting processes are necessary to produce the salable heavier hydrocarbons does not of itself make of its investment in the plant it builds for that purpose an investment in the minerals in place; that the word "capital" (contained in the second factor of the requisite depletion concept, namely, "(2) secured by legal relationship 'income derived from the extraction of the oil, to which he must look for a return of his capital'", *Palmer v. Bender*, 287 U.S. 551; *Commissioner v. Southwest Exploration Co.*, 350 U.S. 308) means the value or the dollar amount of the investment made by taxpayer and does not mean the interest in the oil itself or the hydrocarbon minerals acquired by taxpayer by reason of such investment; that Petitioner did not comply with the second factor of the depletion concept because it looked to no single mineral deposit to recover the value of its large investment in its cycling facilities; and although not reaching the secondary issue, by note 4 the majority say that were they to reach such issue they would hold that all extraction is concluded before the fractionator and the maximum recovery would be 86½% of the amount in suit.

The dissenting opinion of the Circuit Court of Appeals is printed as Appendix D, infra, page 24a. The dissenting

opinion characterizes the approach of the majority opinion as being out of harmony with the developmental judicial accommodation of the percentage depletion doctrine to the practical needs and realities of the oil business and its denial of the existence of an economic interest in Petitioner as being on grounds unrealistic, artificial and hypertechnical. The dissenting opinion concludes: that technical legal title is of little importance; that Petitioner is no stranger to the lease; that Petitioner's contributions were indispensable to exploration and production; that *Commissioner v. Southwest Exploration Co.*, 350 U.S. 308 rather than *Helvering v. Bankline Oil Co.*, 303 U.S. 362 is the controlling precedent; that Petitioner's contribution of indispensable facilities was an investment; that Petitioner acquired an economic interest in gas in place; that return of Petitioner's "capital" depends solely on extraction of gas; that recoupment of capital is not recovery of amounts spent but recovery of what was acquired by the expenditure; and on the secondary issue that production includes the hydrocarbon compounds recovered in the separator and absorption phases, that the fractionator phase is not a part of production, and on the stipulations maximum recovery would be limited to 86½ per cent.

Reasons for Granting the Writ

This is the first case in which this Court has been called upon to consider the cycling process, a production method for producing the maximum quantity of heavier hydrocarbons contained in high pressure gas reservoirs, and to determine whether a party who acquires a share of such hydrocarbons in return for making indispensable contributions to the production of such compounds has an economic interest therein so as to be entitled to a depletion deduction

under Sections 23(m) and 114(b)(3) of the Internal Revenue Code of 1939.

This case is of vital importance to the natural gas industry and to those numerous parties who in recent years have and in future years will enter into intricate multi-party transactions for the production of hydrocarbon compounds from the numerous high pressure gas fields and reservoirs of the country, where because of the migratory characteristics of gas, retrograde condensation, and the relative new and expanding cycling process, planned production procedures, unitization, and efficient plant recovery of hydrocarbons are mandatory from the viewpoint of conservation, economics and practicality.

1. The decision of the United States Court of Appeals in the instant case is directly in conflict with the requisite factors of the depletion concept as interpreted and promulgated by this Court in *Palmer v. Bender*, 287 U.S. 551, and in *Commissioner v. Southwest Exploration Co.*, 350 U.S. 308.

This Court in its pronouncement upon the "economic interest" concept in *Commissioner v. Southwest Exploration Co., supra*, stated that in determining which parties are entitled to depletion it had relied on two interrelated concepts which were first formulated in *Palmer v. Bender*, 287 U.S. 551, namely, that a taxpayer is entitled to depletion where he has "(1) 'acquired, by investment, any interest in the oil in place', and (2) secured by legal relationship 'income derived from the extraction of oil, to which he must look for a return of his capital.'"

This Court was called upon to decide whether the contribution of the use of the land of the upland owners for

drill sites in return for rental based on a share of the net profits constituted an economic interest in the oil in place, and the Court stated (pp. 315, 316):

> "It is true that the exclusive right to drill was granted to Southwest and it is also true that the agreements expressly created no interest in the oil in the upland owners. But the tax law deals in economic realities, not legal abstractions, and upon closer analysis it becomes clear that these factors do not preclude an economic interest in the upland owners."
>
> "This contribution was an investment in the oil in place sufficient to establish their economic interest. Their income was dependent entirely on production, and the value of their interest decreased with each barrel of oil produced. No more is required by any of the earlier cases."

The majority opinion of the Court below erroneously deals in legal abstractions rather than in economic realities, erroneously denies to taxpayer the existence of the first factor in the depletion concept on the ground that taxpayer did not have legal title in the ground to its share of the hydrocarbons and denies that the many contributions of taxpayer including the cycling facilities can constitute an investment in the minerals in place, all in direct conflict with the principles enumerated by this Court.

2. The decision of the United States Court of Appeals in the instant case is directly in conflict with the meaning of the word "capital" (contained in the second factor of the requisite depletion concept promulgated by this Court in *Palmer v. Bender*, 287 U.S. 551, and in *Commissioner v. Southwest Exploration Co.*, 350 U.S. 308, namely: "and secures by any form of legal relationship income derived

from the extraction of the oil to which he must look for a return of his capital"). The statutory depletion allowance is related to the removal of a mineral from its natural reservoir which in turn diminishes the quantity remaining in the reservoir until the supply is eventually exhausted. Statutory depletion is not limited to the recovery of the taxpayer's basis. It is submitted that the return of "capital" factor means and relates to the interest or the share of oil itself (in this case taxpayer's share of the heavier hydrocarbons) acquired and owned by taxpayer by reason of its investment and contributions referred to in the first factor of the formula. The minerals themselves are the capital or the capital investment referred to by this Court in the second factor.

In *Palmer v. Bender, supra*, where the formula was first promulgated this Court in talking about the oil itself as being the capital or the capital investment of the taxpayer which is subject to depletion, and we reach this conclusion from the following words of the Supreme Court:

> "It is enough if by virtue of the leasing transaction he has retained a right to share in the oil produced. If so he has an economic interest in the oil, in place, which is depleted by production.
>
> "Even though legal ownership of it, in a technical sense, remained in their lessor, they, as lessees, nevertheless acquired an economic interest in it which represented their capital investment and was subject to depletion under the statute.
>
> "Thus throughout their changing relationships with respect to the properties, the oil in the ground was a reservoir of capital investment of the first parties, all of whom, the original lessor, the two partnerships and

their transferees; were entitled to share in the oil produced."

The majority opinion of the Court below erroneously interprets the word "capital" in the second factor of the depletion concept to be the recoupment of the amount of money spent by taxpayer to acquire the interest in the heavier hydrocarbons rather than the interest or the share of the hydrocarbons acquired and owned by taxpayer by reason of its investment and contributions referred to in the first factor of the formula. In other words the majority opinion says that the recoupment of capital is the recovery of the amount spent and is not the recoupment of what was acquired, the minerals themselves. This is a startling new pronouncement not heretofore recorded in depletion case law. Coupled with such erroneous definition of "capital," the majority opinion promulgates the theory and holding that the recoupment of such capital by taxpayer must be solely obtained from a "single mineral deposit" or a "single producing property" or "one property" and that taxpayer did not comply with the second factor of the depletion formula because it looked to multiple properties to recover the value of its large investment.

The impact of such revolutionary holdings and resultant additional limitations on the statutory depletion allowance, all foreign to any depletion concepts promulgated by this Court, is of importance not only to Petitioner but to the entire oil and gas industry and to all parties having an interest in minerals and other natural deposits which are the subject matter of the depletion deduction provided in Section 23 of the Internal Revenue Code of 1939. It is also to the interest of the Government to have this matter determined by this Court in the light of the constantly recurring issues as to depletion in the cycling operations.

3. The decision of the United States Court of Appeals in the instant case is directly in conflict with the factors of an economic interest delineated anew by this Court in the strip mining cases of *Parsons v. Smith; Hess v. Smith*, 359 U.S. 215, apparently handed down subsequent to the writing of the majority opinion in the Court of Appeals but prior to the writing of the dissenting opinion. The seven facts enumerated by this Court in *Parsons v. Smith, supra*, as being decisive in denying an economic interest to the coal stripping contractors are equally decisive in the instant case where the converse of each such enumerated fact is found in the case of Petitioner.

4. The United States Court of Appeals has decided erroneously a federal question involving the right of a party engaged in the production of heavier hydrocarbons by the cycling process to the statutory depletion deduction on its share of such hydrocarbon compounds. Petitioner accordingly submits that the Court below has decided important questions of Federal Law which have not been but should be settled by this Court, and has decided them in a way which will have such extreme effect on the administration of a vital Federal tax statute as to call for review by this Court.

There exist today many intricate multiparty transactions for the production of the heavier hydrocarbons in high pressure gas reservoirs by means of the cycling process. The changes, novations, evolution, and procedures of the gas industry during the last century have been monumental. The differences in the subject matter and production methods and the respective contributions of the taxpayer to production of the heavier hydrocarbons prevent the old casinghead gasoline plant cases from being analo-

gous for depletion issues with reference to the cycling production method.[4]

Clearly the question presented is of vital importance in the administration of the Revenue Laws. Settlement of the question by this Court is indeed in the public interest since it is likely to be presented in many income tax returns and in multitudinous claims for refund by parties owning cycling facilities or an interest therein, including many now pending. Suits involving the question of depletion allowance to those engaged in cycling and in the recovery of hydrocarbons are now pending in United States District Courts. The question herein should be settled by the Supreme Court.

5. This is the second case involving the cycling process and the statutory depletion deduction which has been reviewed by any United States Court of Appeals. The first such case is *Hudson v. Commissioner*, 11 T.C. 1052 (1949), affirmed by the United States Court of Appeals for the Fifth Circuit *per curiam*, 183 F. 2d 180 (1950), hold-

[4] The dissenting opinion in the United States Court of Appeals discusses some reasons for the distinction, in the following words:

"The distinction between this case and **Bankline** is patent and vital. There the Court expressly found that the operator 'was not engaged in production' and was but 'a processor.' 303 U.S. 362 at 367. Both the Court and Tax Court emphasized that the operator 'did not produce [the gas] and could not compel its production * * * [and it] had no enforceable rights * * * prior to the time the wet gas was actually placed in its pipeline. * * *.' 303 U.S. 362 at 368.

"Here Taxpayer had enforceable rights for the life of the underlying leases. It had such definitive legal right that it could compel the continued operation of the wells and the extraction of the gas. For the life of the contract (hence life of the leases), the Sellers had altogether relinquished their rights to make sales of, or contracts respecting, the delivery, processing, or sale of the gas covered by the contract. More important, as pointed out in detail above, what Taxpayer did here was **production** in a very real, as well as legal, sense."

ing that taxpayer possessed an economic interest in specified minerals in place (heavier hydrocarbons) which entitled him to a deduction for depletion, and the determinations of the Tax Court were affirmed.

The contributions of Hudson and Petitioner in contributing cycling facilities in substance were the same (except Hudson did not drill and equip any producing or input wells), the method of production (cycling) was the same, the source of return was the same.

The only differentiation between the Hudson and La Gloria cases would have to be based on the type of conveyance that existed in the Hudson case, but be that as it may, this Court has held that an actual conveyance of legal title makes no difference in that the law of depletion requires an "economic rather than a legal interest in the oil in place," *Commissioner v. Southwest Exploration Co.*, 350 U.S. 308.

Conflict exists between these two decisions of the same Court of Appeals with the majority of one panel of the Court (Tuttle and Jones, Circuit Judges) not following the prior decision on the same issue rendered by another panel of the same Court (Hutcheson, McCord, Russell, Circuit Judges). The important issue herein will in all probability be a recurrent one within the Court of Appeals for the Fifth Circuit wherein are found multitudinous high pressure gas reservoirs, from which in many instances heavier hydrocarbons will be produced by the cycling process.

The question herein and the above mentioned conflict should be settled by the Supreme Court because of its importance to the gas industry and as an aid to the administration of the Revenue Laws.

6. The majority opinion of the United States Court of Appeals contains erroneous conclusions of certain facts not to be found in the record, which erroneous conclusions form the stated basis for such opinion's erroneous one property concept and may also be a factor in the erroneous conclusion that the Petitioner does not comply with the second factor of the depletion formula.

Even if Petitioner had utilized a portion of the capacity of its cycling facilities for the production of hydrocarbons from units or leases not covered by the three agreements involved in this suit, nevertheless the indispensable contribution of Petitioner to the production of the hydrocarbons which were produced from the properties covered

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The majority opinion states as the critical point that Petitioner did not look solely to the extraction of minerals from any one property, that only three of thirty-five different producing zones in the La Gloria Field were involved in this proceeding, and that La Gloria was receiving production from the other thirty-two zones (by inference from other parties or under other agreements) (Appendix C, infra, p. 3a). The majority is mistaken when it concludes that any of such zones or production therefrom was outside the three several agreements involved in this proceeding (R. 13-139).

This case involves income and depletion deductions pursuant to the several agreements (Ex. A, R. 53; Ex. B, R. 86; Exhibit C, R. 116), the tax and depletion referable to each being segregated and stipulated (R. 38-40).

Petitioner does own leaseholds in the Blucher Field outside the gas units involved in this proceeding, low pressure gas from which is not cycled, and facts with reference to Petitioner's investments therein, low pressure separation facilities therefore, and production therefrom, are not to be found in the record. This was understood by the District Court and understood by counsel for Respondent (R. 179-180).

Not a scintilla of evidence exists in the record that any investment or contribution made by Petitioner pursuant to any one agreement involved herein nor cycling capacity dedicated thereto was ever utilized by Petitioner to produce hydrocarbons pursuant to a different agreement, or from an outside lease or from any other unrelated gas leasehold.

by each of such three agreements is sufficient to create in Petitioner an economic interest therein. Petitioner could look solely to its share of the production under each respective agreement for the recoupment of the capital it acquired, the hydrocarbons themselves, under each such respective agreement; and the value of Plaintiff's interest decreased with each barrel of hydrocarbons produced.

Equity warrants review by this Court and the correction of plain errors of fact and law.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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